

REMARKS/ARGUMENTS**Status of the Claims**

In the Office Action mailed December 28, 2006, claims 1-36 are pending. Claims 1, 6, 8, 12, 14-16, 18-20, 23-27, 30, 33 and 35 have been amended merely to place these claims in better form for US practice. No new matter has been added.

Claims 1-16, 26-29, 33 and 34 were rejected and claims 17-25, 30-32, 35 and 36 were objected to by the Examiner as being dependent upon a rejected base claim but allowable if rewritten in independent form. The rejection is respectfully traversed. Applicants have thoroughly reviewed the outstanding Office Action including the Examiner's remarks and the references cited therein.

The following remarks are believed to be fully responsive to the Office Action. All the pending claims at issue are believed to be patentable over the cited references. Reconsideration and withdrawal of the outstanding rejections are respectfully requested in view of the following remarks.

Priority

The Examiner requested a certified copy of the 0303870.0 application as required by 35 U.S.C. § 119(b). Applicants hereby provide a certified copy of the 0303870.0 application.

Information Disclosure Statement

Pursuant to the Examiner's request to list certain references mentioned in the specification on an Information Disclosure Statement, Applicants hereby submit an Information Disclosure Statement.

Claim Rejections - 35. U.S.C. §102(a)

Claims 1, 6-9 and 11 are rejected under 35. U.S.C. § 102(a) as being anticipated by Brunnberg et al. (U.S. Patent No. 6,880,555). For anticipation under 35 U.S.C. § 102, the reference must teach every aspect of the claimed invention either explicitly or implicitly. Any feature not directly taught must be inherently present (M.P.E.P. §706.02).

Brunnberg cannot teach or suggest at least "a rake connected to the cover and extending into the housing, the rake being engageable with the magazine so that, upon movement of the cover to open access to the mouthpiece, the rake moves the magazine and causes one of the reservoirs to be positioned within the delivery passageway," as recited in claim 1. (Emphasis added). Rather, Brunnberg discloses a dry powder inhaler having a housing 10, a mouthpiece 12, an inhalation opening 14 and a cover 16 pivotally attached to the housing 10. The housing 10 has an opening 66 to accommodate a protrusion 68 disposed on the cover 16. Medicament is packaged in blisters 78 that are arranged on a strip 80 capable of being mounted on a wheel 70 disposed within the housing 10. The inhaler has an activating means that includes a cantilever 46 having a rack 54

at one end. The rack 54 engages a cogwheel 56 having a plate 58 and a pawl 60. Generally, the cover 16 is opened and the protrusion 68 disengages the opening 66. Thereafter, the user inhales medicament through the mouthpiece 12.

The Examiner states that Brunnberg anticipates claims 1, 6-9 and 11 by arguing that Brunnberg's protrusion 68 acts as "the rake" in these claims. In particular, the Examiner contends that "upon the cover being moved to open the mouthpiece, the rake moves the magazine [Brunnberg's strip 80] and causes one of the reservoirs [Brunnberg's blisters 78] of the magazine to be positioned within the delivery passageway [Brunnberg's inhalation opening 14]," as recited in claim 1. (Office Action p. 3.)

To the contrary, Brunnberg's blisters 78 are advanced upon closing the cover 16. Brunnberg states that, after the user has inhaled the dose, he closes the cover 16, causing the protrusion 68 on the cover 16 to contact a tongue 64 of the plate 58. This contact rotates the cogwheel 56, causing the pawl 60 to rotate the wheel 70 so as to advance a blister 78. Thus, Brunnberg advances a blister of medicament upon the closing of the cover, whereas the current claims recite that the reservoirs of the magazine are advanced upon opening the cover.

Since each and every element of the claim is not found, either expressly or inherently described as required by the M.P.E.P., Brunnberg cannot be said to anticipate "a rake

connected to the cover and extending into the housing, the rake being engageable with the magazine so that, upon movement of the cover to open access to the mouthpiece, the rake moves the magazine and causes one of the reservoirs to be positioned within the delivery passageway," as recited in claim 1. Accordingly, withdrawal of the rejection of claim 1 is respectfully requested.

Claims 6-9 and 11 depend either directly or indirectly from claim 1. For at least this reason, claims 6-9 and 11 are believed to be in condition for immediate allowance.

Claim Rejections 35 U.S.C. §103(a)

Claims 2-5, 12-16, 26-29, 33 and 34 are rejected under 35 U.S.C. §103(a) as being unpatentable over Brunnberg in view of Rose et al. (U.S. Patent No. 5,441,060). This rejection is respectfully traversed.

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. MPEP §2142. To establish a *prima facie* case of obviousness, three criteria must be met. First, there must be some suggestion or motivation to modify the references or to combine reference teachings. Second, there must be reasonable expectation of success. Finally, the prior art must teach all the claim limitations. MPEP §2142. In light of the following arguments, the combined references do not teach or suggest all of the claim limitations of the present invention. Applicants respectfully

point to the final prong of the test which states that the prior art must teach all of the claim limitations. At the very least, the combined references do not teach or suggest all of the limitations of these claims, as stated below.

With respect to the rejection of claims 2-5 and 12-16, as previously discussed, Brunnberg does not teach or suggest at least "a rake connected to the cover and extending into the housing, the rake being engageable with the magazine so that, upon movement of the cover to open access to the mouthpiece, the rake moves the magazine and causes one of the reservoirs to be positioned within the delivery passageway," as recited in claim 1. Rose does not cure this deficiency of Brunnberg. Therefore, even combining Brunnberg with Rose, claim 1 and claims 2-5 and 12-16 depending therefrom, are not rendered obvious. As such, withdrawal of the rejection of claims 2-5 and 12-16 is respectfully requested.

With reference now to claims 26-29, 33 and 34, neither Brunnberg nor Rose teach or suggest "deployable medicament pistons positioned in the reservoirs, each piston including at least one chamber for holding dry powder medicament, so that deployment of the piston through one of the layers of moisture resistant, air-tight material presents the dry powder medicament to the delivery passageway of the dry powder inhaler for inhalation," as recited in claim 26.

Although Rose does teach a blister pack 70 having a backing layer 72 of aluminum foil that is overlaid by a blister sheet 74 to encase cartridges 42 in a moisture resistant manner, the Examiner is mistaken when he argues that all the elements of independent claim 26 are disclosed or taught by Brunnberg in combination with Rose. In particular, neither Brunnberg nor Rose, either alone or in combination, teach or suggest "deployable medicament pistons positioned in the reservoirs, each piston including at least one chamber for holding dry powder medicament," as recited in claim 26. There is no mention of pistons in either Brunnberg or Rose and the Examiner does not provide any support for this contention. Accordingly, withdrawal of the rejection of claim 26, and claims 27-29, 33 and 34 depending therefrom, is respectfully requested.

Claim 10, depending from claim 1, is rejected as being obvious over Brunnberg in view of U.S. Patent 7,093,595 to Nesbitt. Because Nesbitt does not overcome the deficiencies of Brunnberg, claim 10 also cannot be rendered obvious for the same reasons as discussed above. Accordingly, withdrawal of the rejection of claim 10 is respectfully requested.

Applicants appreciate the Examiner's indication that claims 17-25, 30-32, 35 and 36 are merely objected to, and would be allowable if rewritten to include all of the limitations of the claims from which they depend. However, for the reasons discussed above, Applicants believe all of the claims in this

Application No.: 10/783,796

Docket No.: TEVNHC 3.0-071

application are allowable, and therefore do not believe the rewriting of these claims is warranted.

CONCLUSION

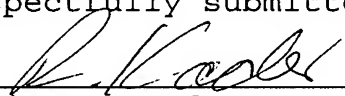
As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: April 30, 2007

Respectfully submitted,

By


Rabiya S. Kader

Registration No.: 48,160
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicants

728373_1.DOC